

A NEW PARADIGM FOR LPOs: HOW THE LEGAL PROCESS OUTSOURCING INDUSTRY CAN ADAPT IN A CHANGING LEGAL LABOR MARKET

ROBB HERN*,
GREG MITCHELL^

ABSTRACT

During the Great Recession,¹ when law firms were scaling back and a law school degree lost its “golden ticket” status, there was one part of the legal sector in a boom—legal process outsourcing (“LPOs”). Over the past decade, this area of the legal market swelled due to lower-cost domestic labor, corporations becoming more intelligent buyers and law firms getting out of the lower margin, increasingly risky discovery work. In recent years, due to the improving economy and decreasing law school class sizes, the legal labor market has over-corrected. As a result, pressures are boiling over in the United States regarding a lack of skilled new attorneys for LPOs. This is causing LPOs to change their business models in ways not anticipated several years ago. The main question is: what happens to LPOs when they can no longer rely on labor market conditions favorable to their business models? This article examines that question, what led to this point and where LPOs are going as a result of this over-correction. It reaches the conclusion that smart, innovative LPOs will view the changing market dynamics as an opportunity and engage in new ventures that will foster expertise in their employees that will allow them to do more with less.

I. THE TRAIL TO AN EXCESSIVELY SATURATED LEGAL LABOR MARKET

Being an attorney has always been an esteemed profession and high-paying careers were assumed to follow graduation. In the 2000’s, law schools recognized an increased demand for the opportunity they provide and in the aggregate, began expanding class sizes to accommodate this perceived demand. In 2000, there were 38,156 law school graduates around the country

* Adjunct Professor of Law on eDiscovery Law and Practice at Moritz College of Law, Visiting Professor of Data Security and Incident Response at Miami Law, and Director of Legal Residency Programs at UnitedLex.

^ Counsel at UnitedLex.

¹ “The United States went through its longest, and by most measures worst economic recession since the Great Depression between December 2007 and June 2009.” *Chart Book: The Legacy of the Great Recession*, CENTER ON BUDGET AND POLICY PRIORITIES (Sep. 12, 2017).

and over the next seven years, class sizes grew by 14 percent to 43,518.² Much was written about this phenomenon, but basic economic principles dictate that such growth would be healthy so long as the employer demand for newly-minted lawyers continued at a similar rate—which appeared to take place. Throughout this same period of time, the employment rate³ for recent law graduates remained steady overall, with the rate varying by between 88.9 percent and 91.9 percent, with the latter being the eventual peak in 2007.⁴ Therefore, at the most basic level, the legal market for entry-level attorneys was healthy and the law school class size growth was a necessary adjustment.

What caused the increased demand for new lawyers? A significant factor was the seemingly exponential rise of electronic information. The explosion began well before the early 2000's, with email becoming a key form of communication and programs like Microsoft Office taking the place of the pen and paper and the typewriter. Then with the success and growing adoption of the Blackberry in the early 2000's, data growth, especially with emails seemed to have no end in sight. It was over this period, that electronic information began to quickly and heavily impact the legal industry, not only with its potential as evidence but also as a component of case strategy. A typical "midsize case" in the early 2000's may have involved five gigabytes (GB) of data, and several years later 500 GB of data in a given case was seen as the new normal.⁵ Today, cases in multidistrict litigation can easily have north of 10 terabytes (TB)—or 10,240 GB—associated with them. It was not rare for big litigation projects to have hundreds of attorneys working on them at any given time over a period of several years. These projects gave new associates abundant billable work, and were often their training grounds as they prepared to do more complex litigation work in future years.

The corporate perception of legal spend also did not help to slow this increase of work for newly-minted lawyers. The common perception within corporations was that legal expenses were a necessary cost of doing business, and to question the cost of litigation was to put the outcome of the litigation at risk.⁶ Most stakeholders were completely unaware of how much data their

² James G. Leipold & Judith N. Collins, *The Stories Behind the Numbers: Jobs for New Grads Over More than Two Decades*, NALP (Dec. 2016), <http://www.nalp.org/1216research> [<https://perma.cc/J2M4-BQLY>].

³ NALP calculates the employment rate as the "number employed divided by the number whose status is known." nalp, *Methodology for Calculating Graduate Employment Rate*, <http://www.nalp.org/uploads/ERSS/employmentratecalculation.pdf>.

⁴ *Id.*

⁵ Alan Cohen, *Data, Data Everywhere*, CORP. COUNSEL, July 2007, at 78.

⁶ Rhys Dipshan, *Metrics in Motion: Two Ops Managers Share Stories of Analytics Implementations*, LEGALTECH NEWS (June 6, 2017), <http://www.legaltechnews.com/id=1202788733371/Metrics-in-Motion-Two-Ops->

own entity was creating and how much was being spent on litigation at the time (or at any time).

The equilibrium lasted while the economy surged but eventually macroeconomic forces tipped it out of balance. The Great Recession officially began in December of 2007 and lasted until June of 2009.⁷ During this period, the US labor market lost 8.4 million jobs, or 6.1 percent of all payroll employment.⁸ Unemployment and underemployment took over much of the country and the legal industry was no exception. In what seemed like overnight, job offers at graduation were rescinded, signing bonuses disappeared, and some associates saw their salaries slashed significantly ahead of their first days.⁹

After the Class of 2007, law schools began trending away from employer demand. Over the next several years, law school class sizes continued to balloon all the way up to 46,766 in 2013—an increase of 7.5 percent since 2007.¹⁰ Unsurprisingly, the market could not keep up with the increasing class sizes, and over this period of time, the employment rate steadily dropped from the 91.9 percent in 2007 to a low of 84.5 percent in 2013.¹¹ Put simply, from 2007 to 2013 the market was becoming more and more saturated from two directions: the excessive volume of law school graduates and the attorneys getting laid off in troves due to the bitter downturn. Many in the latter group were willing to take entry-level positions thereby competing with new-attorneys in the labor market.

II. THE ECONOMIC DOWNTURN CREATES AN OPPORTUNITY FOR LPOS TO INCREASE THEIR ABILITY TO HIRE ATTORNEYS

With traditional law jobs on the decline, the number of jobless graduates increasing, and the usual student loan burdens for new graduates, the unemployed legal market entered a period of desperation. Once this new reality hit, recent law school graduates and unemployed attorneys were feverishly trying to get a dollar in their pocket and some legal experience

Managers-Share-Stories-of-Analytics-

Implementations?mcode=0&curindex=0&curpage=ALL.

⁷ *The Great Recession, The State of Working America*, ECONOMIC POLICY INSTITUTE, <http://stateofworkingamerica.org/great-recession/>.

⁸ *Id.*

⁹ Erin Marie Daly, *Pay Cuts Ahead At Bryan Cave, Frost Brown*, LAW 360 (June 11, 2009), <https://www.law360.com/topnews/articles/106046/pay-cuts-ahead-at-bryan-cave-frost-brown>.

¹⁰ National Association for Law Placement, “Class of 2013 National Summary Report.” (<http://www.nalp.org/uploads/NatlSummaryChartClassof2013.pdf>).

¹¹ National Association for Law Placement, “Employment Rate of New Law Grads Up for the First Time Since 2007, Helped by Smaller Class Size.” (<http://www.nalp.org/0815research>).

under their belt. Suddenly a new graduate or out-of-work attorney was lucky to get a job paying \$20 an hour that was within the legal spectrum. It was only a matter of time before LPOs began to see an opportunity to increase their domestic outsourcing presence.¹²

LPOs had already been working in India for several years at this point,¹³ but the U.S. presence was still limited to niche markets like Washington, D.C. A combination of circumstances arose that drove LPO expansion. First, for corporations, the recession caused a great deal of stress internally and departments were getting tasked with finding extreme cost-savings.¹⁴ Legal operations was still in its infancy but gaining traction quickly, and as corporations began to examine their legal costs, they were met with a very novel and obvious concept from LPOs.¹⁵ The pitch from LPOs to corporate legal departments was simple: "First-year associates are performing discovery work as their training grounds and you are being charged too much. We are specialists in discovery and will charge you a fraction of the price that was being charged by firms and given this specialization, the quality of the work-product will actually be higher." Then to law firms, who were seeing their bills get more and more scrutiny, the pitch from LPOs was equally simple: "The market is adapting and evolving, and hiring us is a way to illustrate you care about your clients' bottom line and are going to look for ways to be cost-conscious in litigation. Additionally, this work is becoming more complex and riskier with lessening profitability, so this is less desirable work for you to take on."

With the success of these pitches, LPOs needed an increasing supply of attorneys to perform the work. The boom thus began with an abundance of skilled attorneys and talented recent law school graduates willing to take project-based work at an hourly rate.

The below chart shows a rough chronology of available press releases published by LPOs between 2008 and 2017 that noted new offices opening via growth, acquisition or expansion within the U.S. To keep this

¹² Heather Timmons, *Legal Outsourcing Firms Creating Jobs for American Lawyers*, N.Y. TIMES (June 2, 2011), <http://www.nytimes.com/2011/06/03/business/03reverse.html>.

¹³ "Outsourcing legal work to India began in 1995, when the 34-lawyer, Dallas-based litigation firm of Bickel & Brewer opened an office in Hyderabad." Daniel Brook, *Made in India: Are Your Lawyers in New York or New Delhi?*, LEGAL AFFAIRS (May/June 2005), http://legalaffairs.org/issues/May-June-2005/scene_brook_mayjun05.msp.

¹⁴ Susan Hansen, *The Rise of In-House Legal Operations*, BLOOMBERG L. BIG L. BUS. (February 24, 2015).

¹⁵ *Id.*; "When it comes to outside providers, some legal departments find they can save money by sending work to legal process outsourcing (LPO) companies or offshore providers instead of law firms." Ashley Post, *3 Cost-Cutting Tips for Legal Departments*, INSIDECOUNSEL (April 30, 2012).

analysis objective, this information is based only on press releases, which by their nature are more restrictive.¹⁶ It should be noted that, in theory, a properly-scaled office should be opened just under the market's peak labor utilization. Therefore, when an LPO enters a new market, they traditionally perform a market analysis that identifies local wages for discovery services and the amount of competitors in the metropolitan area. They would also publish certain job postings and measure the number of resumes submitted over specific periods of time. If a company opens an office with 100 seats, they should be able to procure just more than that in their standard operations to be fully utilized. If the maximum labor in a metropolitan area is 100 individuals and an office opens a facility with 100 seats, it is therefore very unlikely that the office will ever be fully utilized, and there is a level of waste that would be unacceptable in the LPO market. From an LPO perspective, offices with more than 100 seats are generally considered main delivery hubs, while offices of 100 or less are considered "strategic locations."

The data below shows that prior to 2014 there were, at a minimum, 15 offices that were added to the market with listed seat counts of more than 100, and another 35 added offices without reference to seat counts. If one takes a conservative estimate of the seat counts for the unknown office locations of 50 seats, then the total number of seats added would at a minimum be 5,045 over this six-year span. Additionally, there was new investment by existing companies in traditionally lower-cost geographies over this period as well. Detroit had four new offices added to its portfolio, and the state of Ohio added four as well. One provider expanded its Fargo, ND operations to approximately 340 seats and touted its ability to reach a peak head count of 900 if 24/7 operations were running.¹⁷ Lastly, the sheer size of some these offices indicates just how deep these labor pools were at the time. "Mega" offices are those with a seat count over 175. Between 2008-2014, there were press releases that publicized the opening of five such offices, with seat counts going all the way up to 400 for two openings.

¹⁶ This analysis, while inherently incomplete, can appropriately be thought of as a representation of larger movements in this sector. LPOs typically do not advertise their first office, and office sizes are not frequently mentioned so that there is flexibility on the sales and marketing front. Further, there is some information loss here. As LPOs acquire other similar entities, the acquired company's information and former press releases can be lost. Lastly, some geographies will start as temporary and those engagements can last a while until a permanent structure is built, hence it would seem odd to add the opening of a new office for a city that the LPO had been working in for years. Conversely, a LPO could move to a new geography with just one employee and a single ten foot by ten foot single office and then overtime, as the demand grew, so did the office. So perhaps at the time of "ground breaking" only one employee existed but two years later 100 do.

¹⁷ *Opening of Integreon's New and Expanded Global Delivery Center in Fargo*, INTEGREON [hereinafter *Integreon*], <http://www.integreon.com/BlogDetails?BGID=112>.

| Company | Stated Seat Count | Location | Reason |
|--------------------------------------|-------------------|-------------------|------------|
| 2008 | | | |
| Transperfect ¹⁸ | Unknown | Phoenix, AZ | New Office |
| Black Letter Discovery ¹⁹ | Unknown | Columbus, OH | New Office |
| 2009 | | | |
| DiscoverReady ²⁰ | 100 | Charlotte, NC | New Office |
| AlixPartners ²¹ | Unknown | Washington, DC | New Office |
| Inventus ²² | Unknown | Chicago, IL | New Office |
| 2010 | | | |
| DiscoverReady ²³ | Up to 350 | Charlotte, NC | Expansion |
| Black Letter Discovery ²⁴ | Unknown | Cleveland, OH | New Office |
| 2011 | | | |
| Pangea3 ²⁵ | 400 | Dallas, TX | New Office |
| Black Letter Discovery ²⁶ | Unknown | Cincinnati, OH | New Office |
| Consilio ²⁷ | Unknown | Washington, DC | New Office |
| DiscoverReady ²⁸ | Unknown | San Francisco, CA | New Office |
| Haystack ID ²⁹ | Unknown | San Francisco, CA | New Office |
| Integreon ³⁰ | Unknown | Washington, DC | New Office |

¹⁸ *TransPerfect Opens New Office in Phoenix, Arizona*, TRANSPERFECT LEGAL (Feb. 18, 2008), <http://www.transperfectlegal.com/news/transperfect-opens-new-office-phoenix-arizona> [<https://perma.cc/2478-LDDM>].

¹⁹ *BLD Launches Cleveland, Ohio*, BLACK LETTER DISCOVERY (Dec. 3, 2010), http://www.blackletterdiscovery.com/about/news_20101203.php [<https://perma.cc/A34Z-MBQG>]; Press Release, DiscoveryReady, DiscoveryReady Opens Document Review Facility in Charlotte (July 29, 2009), <https://discoverready.com/press-releases/discoverready-opens-document-review-facility-in-charlotte/> [<https://perma.cc/M52Y-E9Q3>].

²¹ Press Release, AlixPartners, AlixPartners Opens Office in Washington, DC (May 13, 2009), <http://legacy.alixpartners.com/en/MediaCenter/PressReleases/tabid/821/articleType/ArticleView/articleId/43/AlixPartners-Opens-Office-in-Washington-DC.aspx#sthash.RE9ujEWU.dpbs> [<https://perma.cc/D6GN-A7AY>].

²² *Inventus LLC Opens New Office in Chicago*, INVENTUS: INVENTUS BLOG (Dec. 9, 2009, 6:00 AM), <http://blog.inventus.com/inventus-company-news/inventus-llc-opens-new-office-in-chicago> [<https://perma.cc/KJ5J-BDFD>].

²³ Press Release, Discovery Ready, DiscoverReady, a Leader in eDiscovery Management Services, Adding Jobs and Expanding in Charlotte (Nov. 22, 2010), <https://discoverready.com/press-releases/discoverready-a-leader-in-ediscovery-management-services-adding-jobs-and-expanding-in-charlotte/> [<https://perma.cc/8HAC-4XF7>].

²⁴ *BLD Launches Cleveland, Ohio*, *supra* note 17.

²⁵ *Pangea3 picks Texas LPO centre over Dakota/Virginia with space for up to 400 (UPDATE)*, LEGALLY INDIA (June 6, 2011, 3:22PM), <http://www.legallyindia.com/lpo-legal-process-outourcing/pangea3-opens-texas-lpo-centre-half-year-post-thomson-reuters-takeover-20110606-2141> [<https://perma.cc/TNL2-49XM>].

²⁶ *BLD Hires Bob Roberts to Launch BLD's 3rd Ohio Office in Cincinnati*, BLACK LETTER DISCOVERY (Dec. 5, 2011), http://www.blackletterdiscovery.com/about/news_20111205.php [<https://perma.cc/YT5F-A8R2>].

²⁷ *Consilio Expands Managed Review Services in Washington, D.C.*, CONSILIO (Dec. 6, 2012) [hereinafter *Consilio*], <http://www.consilio.com/2012/12/consilio-expands-managed-review-services-in-washington-d-c/> [<https://perma.cc/B9S6-N2GU>].

²⁸ Press Release, DiscoveryReady, DiscoverReady Opens West Coast Operations (June 27, 2011), <https://discoverready.com/press-releases/discoverready-opens-west-coast-operations/> [<https://perma.cc/LRK3-6JW6>].

²⁹ Press Release, Haystack ID, Haystack Information Discovery eyes expansion; opens San Francisco office (May 16, 2011), <http://www.haystackid.com/resources/PR-SanFran.pdf> [<https://perma.cc/3L9A-4GK6>].

³⁰ *Integreon Opens Legal Document Review Center in Washington, D.C.*, INTEGREON (Nov. 9, 2011), <http://www.integreon.com/BlogDetails?BGID=301> [<https://perma.cc/JNV5-RXMV>].

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|--|------------|--|--------------------------------|
| Kroll Ontrack | Unknown | Washington, DC Dallas, TX New York, NY | New Offices |
| DTI ³¹ | Unknown | Palo Alto, CA | New Office |
| UnitedLex | 125 | Cincinnati, OH | New Office |
| XDD ³² | Unknown | Dallas, TX | Acquisition |
| 2012 | | | |
| DTI ³³ | 140+ | New York, NY | Expansion to 10,000 Sq. Ft. |
| Consilio ³⁴ | Unknown | Washington, DC | New Office |
| DTI ³⁵ | Unknown | Atlanta, GA | Expansion to 3x Size |
| XDD ³⁶ | Unknown | Houston, TX | Acquisition |
| 2013 | | | |
| UnitedLex ³⁷ | 400 | Richmond, VA | Collaboration |
| Tower Legal Solutions ³⁸ | 120 | New York, NY | New Office |
| Clutch Group ³⁹ | Approx. 20 | Chicago, IL | New Office |
| Computing Source ⁴⁰ | 30 | Chicago, IL | New Office |
| DiscoverReady ⁴¹ | Unknown | Detroit, MI | Expansion |
| DiscoverReady ⁴² | Up to 75 | Houston, TX | Expansion |
| DTI ⁴³ | 250+ | Houston, TX | New Office |

³¹ Press Release, Document Technologies, Inc., Document Technologies, Inc. Opens New Office in Palo Alto, CA (Aug. 19, 2011), <https://www.dtiglobal.com/news-events/press-release/document-technologies-inc-opens-new-office-in-palo-alto-ca/> [https://perma.cc/5APU-JWT].

³² Press Release, Xact Data Discovery, Xact Data Discovery Expands Business Through Acquisition of Landmark Legal Solutions in Dallas, TX (Apr. 4, 2011), <https://www.xactdatadiscovery.com/press-releases/acquisition-landmark-legal-solutions-dallas-texas/> [https://perma.cc/TJ7R-HC2Q].

³³ *Compare* Press Release, Document Technologies, Inc., DTI Relocates New York Office to Midtown Manhattan (Aug. 9, 2012), <https://www.dtiglobal.com/news-events/press-release/dti-relocates-new-york-office-to-midtown-manhattan/> [https://perma.cc/5WX4-82AV], with Press Release, Document Technologies, Inc., DTI Opens State-of-the-Art Document Review and Knowledge Center in New York City (Feb. 27, 2014), <https://www.dtiglobal.com/news-events/press-release/dti-opens-state-of-the-art-document-review-and-knowledge-center-in-new-york-city/> [https://perma.cc/SV73-9ESP] (announcing DTI's expansion to a larger office space with increased capabilities), and *DTI Opens State-of-the-Art Document Review and Knowledge Center in New York City*, DTI (Feb. 27, 2014), (announcing the specific mission-critical functions of DTI's new office location).

³⁴ *Consilio*, *supra* note 25.

³⁵ Press Release, Document Technologies, Inc., DTI Opens New National Technology Center in Atlanta (Oct. 4, 2012), <https://www.dtiglobal.com/news-events/press-release/dti-opens-new-national-technology-center-in-atlanta/> [https://perma.cc/NH9S-H4BY].

³⁶ Press Release, Xact Data Discovery, Xact Data Discovery Expands Business Through Acquisition of Flash Discovery in Houston (Oct. 17, 2012), <https://www.xactdatadiscovery.com/press-releases/acquisition-flash-discovery-houston-texas/> [https://perma.cc/WA4E-AB4E].

³⁷ Press Release, LeClairRyan, *LeClairRyan Partners with UnitedLex in Launch of Innovative Legal Solutions Center* (Oct. 30, 2013), <https://www.leclairryan.com/news/xprNewsDetail.aspx?xpST=NewsDetail&news=1031>.

³⁸ Tower Legal News, *Tower Legal Solutions opens new document review facility at its New York headquarters*, TOWER LEGAL SOLUTIONS (Mar. 13, 2013), <http://www.towerls.com/2013/03/tower-legal-solutions-opens-new-document-review-facility-at-its-new-york-headquarters/> [https://perma.cc/2NT7-SCCX].

³⁹ *Compare* Manjula Dharia, *Clutch Group Opens New, State-of-the-Art Delivery Facility in Chicago*, pPRWEB (Feb. 6, 2013), <http://www.prweb.com/releases/2013/2/prweb10401794.htm> [https://perma.cc/HUU7-RSYA], with Press Release, Clutch Group, *Clutch Group Moves to Expanded Office in Chicago* (Oct. 11, 2016), <http://clutchgroup.com/news/press-release-clutch-group-moves-to-expanded-office-in-chicago/> [https://perma.cc/8ED3-F2YE] (announcing the expansion of Clutch Group Chicago to meet clients' increased demand for managed review services), with *Clutch Group Moves to Expanded Office in Chicago*, CLUTCH GROUP (Oct. 11, 2016), <http://clutchgroup.com/news/press-release-clutch-group-moves-to-expanded-office-in-chicago/> (announcing the Chicago office's expansion to an office double in size).

⁴⁰ *Computing Source Opens New Office In Chicago Loop*, CBS DETROIT (Sept. 11, 2013, 3:05 PM), <http://detroit.cbslocal.com/2013/09/11/computing-source-opens-new-office-in-chicago-loop/> [<https://perma.cc/NQ69-ZFAA>].

⁴¹ Press Release, DiscoveryReady, DiscoverReady Strengthens Midwest U.S. Operations (June 19, 2013), <https://discoverready.com/press-releases/discoverready-strengthens-midwest-u-s-operations/>.

⁴² Press Release, DiscoveryReady, DiscoverReady Expands South-Central U.S. Operations (May 3, 2013), <https://discoverready.com/press-releases/discoverready-expands-south-central-u-s-operations/>.

⁴³ Press Release, Document Technologies, Inc., DTI Opens State-of-the-Art Document Review and Knowledge Center in Houston (Oct. 1, 2013), <https://www.dtiglobal.com/news-events/press-release/dti-opens-state-of-the-art-document-review-and-knowledge-center-in-houston/> [<https://perma.cc/G952-VAPC>].

| | | | |
|---|-----------------|-------------------|----------------------------|
| Haystack ID ⁴⁴ | Unknown | San Diego, CA | New Office |
| Haystack ID ⁴⁵ | Unknown | Denver, CO | New Office |
| XDD ⁴⁶ | Unknown | Chicago, IL | Acquisition |
| Advanced Discovery ⁴⁷ | Unknown | Chicago, IL | New Office |
| Advanced Discovery ⁴⁸ | Unknown | Washington, DC | New Office |
| UnitedLex ⁴⁹ | 135 | Miami, FL | New Office |
| 2014 | | | |
| DTI ⁵⁰ | 150+ | Charlotte, NC | Acquisition |
| Altep ⁵¹ | Unknown | San Diego, CA | New Office |
| Beacon Hill ⁵² | Unknown | Detroit, MI | New Office |
| Clutch Group ⁵³ | 115+ | Washington, DC | Expansion |
| D4 ⁵⁴ | Unknown | Rochester, NY | Expansion |
| D4 ⁵⁵ | Unknown | Chicago, IL | Acquisition |
| Huron Consulting Group ⁵⁶ | 235 | Raleigh, NC | New Office |
| Integreon ⁵⁷ | At Least 340 | Fargo, ND | Expansion |
| Tower Legal Solutions ⁵⁸ | Up to 150 | Dallas, TX | New Office |
| UnitedLex | 120 | Columbus, OH | New Office |
| XDD ⁵⁹ | 90 | Detroit, MI | Expansion |
| XDD ⁶⁰ | Unknown | Dallas, TX | Expansion Doubling Size |

⁴⁴ Press Release, Haystack ID, HaystackID Opens New San Diego Location to Meet Increasing Demand in the Area (Sept. 9, 2013), <http://www.haystackid.com/resources/PR-SanDiego.pdf> [<https://perma.cc/T2G8-NBXS>].

⁴⁵ Press Release, Haystack ID, HaystackID Opens New Office in Denver to Broaden Footprint in the West (Oct. 1, 2013), <http://www.haystackid.com/resources/PR-Denver.pdf> [<https://perma.cc/35XL-CDPT>].

⁴⁶ Press Release, Xact Data Discovery, Xact Data Discovery Acquires In Demand Document Services (June 20, 2013), <https://www.xactdatadiscovery.com/press-releases/xact-data-discovery-acquires-in-demand-document-services/> [<https://perma.cc/L2RH-LM5B>].

⁴⁷ Press Release, Advanced Discovery, Advanced Discovery Opens Chicago Review Center (July 3, 2013), <http://www.advanceddiscovery.com/press-releases/advanced-discovery-opens-chicago-review-center/> [<https://perma.cc/SF6E-33YY>].

⁴⁸ Press Release, Advanced Discovery, Advanced Discovery Opens Washington D.C. Review Center (July 23, 2013), <http://www.advanceddiscovery.com/press-releases/advanced-discovery-opens-washington-d-c-review-center/> [<https://perma.cc/MYS4-EKQR>].

⁴⁹ Press Release, UnitedLex, UnitedLex Opens Miami Office to Support Increasing Client Demand for Specialized Legal Services (Sept. 9, 2013), <https://www.unitedlex.com/news-and-insights/press-releases/2013/unitedlex-opens-miami-office-support-increasing-client-demand> [<https://perma.cc/99DA-TLBN>].

⁵⁰ Press Release, Document Technologies, Inc., DTI Knowledge Solutions Adds Charlotte to Its Odcument Review and Knowledge Canter Network (Feb. 20, 2014), <https://www.dtiglobal.com/news-events/press-release/dti-knowledge-solutions-adds-charlotte-to-its-document-review-and-knowledge-center-network/> [<https://perma.cc/R73Q-5997>].

⁵¹ *Altep Expands Partnership with Ipro Tech, Offers Eclipse Online*, ALTEP (March 27, 2014), <https://www.altep.com/news/archived-news/2014?view=archive&month=3> [<https://perma.cc/M2G3-K5QU>].

⁵² Beacon Hill Legal Opens in Detroit, Joining Beach Hill Technologies, BEACON HILL LEGAL (Apr. 1, 2014), <https://www.beaconhillstaffing.com/BH-Specialties/BH-Legal/News/View-BH-Legal-Article/ArticleId/113/Beacon-Hill-Legal-Opens-in-Detroit-Joining-Beacon-Hill-Technologies> [<https://perma.cc/DR8S-WTDJ>].

⁵³ Press Release, Clutch Group, Clutch Group Moves to Expanded Office in Chicago (Sept. 2, 2014), <http://clutchgroup.com/news/clutch-group-expands-its-headquarters-in-washington-dc/> [<https://perma.cc/WDD5-X74C>].

⁵⁴ Press Release, D4, HBR, QDiscovery, D4, Advanced Discovery Among Shops Hiring, Promoting (May 22, 2014), <http://d4discovery.com/about-us/news/hbr-qdiscovery-d4-advanced-discovery-among-shops-hiring-promoting#sthash.NSybpoJ5.dpbs> [<https://perma.cc/LJ39-BNFQ>].

⁵⁵ Press Release, D4, D4 Continues Expansion in Chicago with the Acquisition of Strategic Document Solutions, Inc. (Oct. 20, 2014), <http://d4discovery.com/about-us/news/d4-continues-expansion-in-chicago-with-the-acquisition-of-strategic-document-solutions-inc#sthash.kAvCdV7g.dpbs> [<https://perma.cc/CH7F-TCUE>].

⁵⁶ Meredith Hamrick, *Huron Consulting Group to Expand Morrisville Office, add about 70 Contract Lawyers*, TRIANGLE BUS. J. (June 26, 2014, 1:12 PM),

| | | | |
|-------------------------------------|---------|--------------------|------------|
| XDD ⁶¹ | Unknown | Kansas City, MO | New Office |
| XDD ⁶² | Unknown | Los Angeles, CA | New Office |
| Advanced Discovery ⁶³ | 100 | New York, NY | Expansion |
| XDD ⁶⁴ | Unknown | Atlanta, GA | New Office |

III. A SHIFT BEGINS: THE LEGAL LABOR MARKET STARTS SHRINKING

The trends described above, however, did not continue for LPOs after 2014 as the labor dynamics shifted dramatically. Since the 2013 peak,

<https://www.bizjournals.com/triangle/news/2014/06/26/huron-consulting-group-to-expand-morrisville.html>.

⁵⁷ *Integreon*, *supra* note 15.

⁵⁸ Bill Hetchcock, *Tower Legal Solutions Opening Dallas Office, Hiring Up to 150*, DALLAS BUS. J. (Mar. 19, 2014, 2:37 PM), <https://www.bizjournals.com/dallas/blog/2014/03/tower-legal-solutions-opening-dallas-office-hiring.html>.

⁵⁹ *Compare* Press Release, Xact Data Discovery, Xact Data Discovery Opens Second Review Center (April 23, 2014), <https://www.xactdatadiscovery.com/press-releases/xact-data-discovery-opens-second-review-center/> [https://perma.cc/6G85-JPTJ]; *with* Press Release, Xact Data Discovery, Xact Discovery Opens Domestic Review Hub (April 9, 2015) <https://www.xactdatadiscovery.com/press-releases/xact-data-discovery-opens-domestic-review-hub/> [https://perma.cc/924Q-J8S5].

⁶⁰ Press Release, Xact Discovery Data, Xact Data Discovery Announces Recent Office Moves, (Dec. 9, 2014), <https://www.xactdatadiscovery.com/press-releases/xact-data-discovery-announces-recent-office-moves/> [https://perma.cc/8JNJ-C24D].

⁶¹ Press Release, Xact Data Discovery, Xact Data Discovery Opens Kansas City Review Center, XACT DATA DISCOVERY (June 30, 2014), <https://www.xactdatadiscovery.com/press-releases/xact-data-discovery-opens-kansas-city-review-center/> [https://perma.cc/G93Q-UK2T].

⁶² Press Release, Xact Data Discovery, Xact Data Discovery Opens Southern California Location (Aug. 18, 2014), <https://www.xactdatadiscovery.com/press-releases/xdd-opens-southern-california-location/> [https://perma.cc/PK28-QK9B].

⁶³ Press Release, Advanced Discovery, Advanced Discovery Expands to Larger Manhattan Facilities (May 27, 2014), <http://www.advanceddiscovery.com/press-releases/advanced-discovery-relocates-to-larger-manhattan-facilities/> [https://perma.cc/UFG7-KTEP].

⁶⁴ Press Release, Xact Data Discovery, Xact Data Discovery Expands to Atlanta (Aug. 26, 2014), <https://www.xactdatadiscovery.com/press-releases/xact-data-discovery-expands-to-atlanta/> [https://perma.cc/EY2C-WM4Z].

law school class sizes have fallen all the way to 35,815 graduates in class of 2016—a significantly lower number than the next smallest class size over the past 20 plus years.⁶⁵ The legal jobs available in the market have also taken a dive since 2013, however not as steeply. There were 37,730 jobs found by the 2013 graduates, and over the next three years that number steadily fell to 31,354.⁶⁶ As a result, the annual number of students without employment ten months after graduation over this four-year span fell from 9,046 in 2013 to just 4,461 in 2016, a 50 percent drop. With this shift, there are now proportionally more legal jobs available to a smaller number of law school graduates. When coupled with the generally improving economy, many of the attorneys previously performing hourly discovery work have now found alternative salaried employment. What does this indicate about where LPOs are heading?

Starting in 2015, there has been a drop in new office openings by LPOs. Over the past three years, only five out of twenty-five opened with more than 100 seats.⁶⁷ Further, these strategic locations are highly concentrated in dense geographies like New York, Los Angeles and Chicago where the legal labor markets are deeper, more stable and reliable.⁶⁸ In the pre-2015 era, Ohio had four new offices created by LPOs, but since 2015, only one LPO moved in to Ohio with a fifty-person, Cleveland office.⁶⁹ Of the delivery hubs that have opened—with more than 100 seats—these were also heavily concentrated in dense geographies, with location openings in Detroit (two), New York, Washington DC, and Atlanta.⁷⁰

The shift towards these larger labor markets may be partly due to an increase in hourly discovery attorney wages in smaller markets—thereby lessening their competitive advantage over denser metropolitan areas. Historically, the wage difference between a more and less densely populated area was around \$4 per hour⁷¹, but over the years, while wages in larger metropolitan areas have remained stable, they have crept up in smaller metropolitan areas and the delta is now only approximately \$2 per hour. With document review rates on the decline over this same period of time and

⁶⁵ James G. Leipold & Judith N. Collins, *The Stories Behind the Numbers: Jobs for New Grads Over More than Two Decades*, NALP (Dec. 2016), <http://www.nalp.org/1216research> [<https://perma.cc/J2M4-BQLY>].

⁶⁶ *Id.*

⁶⁷ *See infra* Table 2, at 7-9.

⁶⁸ *See infra* Table 2, at 7-9.

⁶⁹ *See infra* Table 2, at 8-9.

⁷⁰ *See infra* Table 2, at 7-9.

⁷¹ *Id.* In the past, entry level discovery attorneys at an hourly wage would make \$20 per hour in a small market and roughly \$24 per hour in a larger market (examples of larger markets are Miami, Atlanta, Dallas, etc. and excludes places like New York). Over the years, smaller market hourly wages have increased to approximately \$22 per hour while larger markets have remained at \$24 per hour.

margins tightening, suddenly, these low-cost geographies have more risk associated with them. As an example, labor shortages may result in insufficient scalability. As a result, the hedge to move in to more currently stable geographies that have slightly higher costs, may be worth it to many LPOs, simply for the security of knowing they will be able to scale as needed.

Another possible explanation for the shifting office growth patterns is that LPOs are continuing to grow albeit at a slower rate. In this scenario, the slowed growth could be attributed to two main factors: first, the shift towards using LPOs in a discovery context has slowed as there are fewer new clients out there to adopt the model each year, and second, worker productivity is improving at a rate fast enough to slow the impact of increasing data burdens. As a result, LPOs no longer need mass infusions of 200 plus attorneys in the short term. Rather, they would prefer to open multiple smaller offices more in line with their short-term growth needs.

A final factor to consider, would be that as this sector of the market matures, there are no more “undiscovered” metropolitan areas where there is an abundance of attorneys willing to take on hourly discovery work. It follows that as more offices are built, the labor in any geography must be shared among multiple providers. Since the work delivered in a metropolitan area is rarely required to be done in the same geography as the client, the competition is to utilize the labor first and then provide a continuous stream of work so they do go back in to the market. Poaching hourly discovery labor is discussed below, but does not actually occur in the traditional ways one would think of when working with salaried individuals.

Table 2

| Company | Stated Seat Count | Location | Notes |
|------------------------------------|--------------------------|-----------------|-------------|
| 2015 | | | |
| XDD ¹ | 110 | Detroit, MI | Expansion |
| XDD ¹ | Unknown | Palo Alto, CA | New Office |
| XDD ¹ | Unknown | St. Louis | Expansion |
| Advanced Discovery ¹ | 100-150 | Detroit, MI | New Office |
| Advanced Discovery ¹ | 50, expandable up to 100 | Palo Alto, CA | New Office |
| RVM ¹ | 50, expandable up to 100 | Cleveland, OH | New Office |
| RVM ¹ | Unknown | Los Angeles, CA | New Office |
| Tower Legal Solutions ¹ | 25 | Los Angeles, CA | New Office |
| Integreon ¹ | 100 | Austin, TX | New Office |
| Advanced Discovery ¹ | 100-150 | Detroit, MI | New Office |
| 2016 | | | |
| QuisLex ¹ | Up to 200 | New York, NY | New Office |
| AlixPartners ¹ | 25 | Houston, TX | New Office |
| Advanced Discovery ¹ | Unknown | New York, NY | Expansion |
| Clutch Group ¹ | 45 | Chicago, IL | Expansion |
| D4 ¹ | Unknown | Philadelphia | Acquisition |
| Inspired Review ¹ | Up to 200 | Washington, DC | New Office |
| Inspired Review ¹ | Unknown | New York, NY | New Office |
| XDD ¹ | Unknown | Chicago, IL | Expansion |
| DTI ¹ | Unknown | Los Angeles, CA | New Office |

| | | | |
|---------------------------|---------|----------------------------|------------|
| XDD ¹ | Unknown | Chicago, IL | New Office |
| UnitedLex ¹ | 150 | Atlanta, GA | New Office |
| 2017 | | | |
| Transperfect ¹ | 100 | New York, NY | Expansion |
| HaystackID ¹ | Unknown | New York, NY | New Office |
| DTI | Unknown | Washington DC ¹ | Expansion |
| RVM ¹ | Unknown | Jersey City, NY | Expansion |

IV. AN ASIDE: THE LAW FIRM DISCOVERY TREND

Also during the pre-2010 period, some law firms saw an opportunity to maintain revenue by opening their own discovery operations, thus providing the same services as LPOs. This generally is a much more difficult endeavor given the financial restraints law firms are under. Unlike LPOs, law firms could not get funding from an investment company due to ethical rules that forbid non-lawyer ownership of law firms. Instead the firms that began discovery operations either had to retain profits or request additional partner contributions. Despite these hurdles, at least nine large firms did forge ahead and try to capitalize on the booming eDiscovery market.

However, this expansion ceased midway through the LPO boom, with WilmerHale setting up its discovery operations in Dayton, Ohio in 2010. Over the short term, one explanation for the drop is this is confirmation that the LPOs' pitches were working on both fronts. As a result, many firms have taken the position that Jones Day has, which is not to be tied to a specific eDiscovery platform to maintain flexibility, but rather uses its clout in the market to help negotiate fees down for their clients.⁷² An additional factor to consider is that law firms can be sensitive to their returns on investments and that while the longevity of these operations centers indicates they are most-likely working out, they are likely not providing enough returns to make such a new venture attractive.

⁷² *e-Discovery*, JONES DAY, http://www.jonesday.com/e_discovery/.

| Year Independent Group or Dedicated Space Established | Law Firm | Seats | Geography |
|---|-------------------------------|-----------|-------------------------------|
| 1995 | King & Spalding ⁷³ | 180+ | Atlanta, GA |
| 2002 | Orrick ⁷⁴ | Up to 350 | Wheeling, WV |
| 2003 | Stephoe ⁷⁵ | 100 | Washington DC |
| 2006 | Perkins Coie ⁷⁶ | Up to 100 | Seattle, WA Phoenix, AZ |
| 2007 ⁷⁷ | McGuire Woods ⁷⁸ | Up to 200 | Charlotte, NC Richmond, VA |
| 2009 | Nelson Mullins ⁷⁹ | Unknown | Columbia, SC Nashville, TN |
| 2009 | Winston Strawn ⁸⁰ | 10 to 150 | Washington DC and New York |

⁷³ *E-Discovery Practices*, KING & SPALDING, <https://www.kslaw.com/practices/e-discovery> [<https://perma.cc/W9HC-4Y8S>].

⁷⁴ *Orrick's Global Operations Center Celebrates 10th Anniversary*, ORRICK (Jul. 10, 2012), <https://www.orrick.com/News/2012/07/Orricks-Global-Operations-Center-Celebrates-10th-Anniversary> [<https://perma.cc/92YM-5BBV>].

⁷⁵ *Complex Litigation & Discovery Center-Document Review Services*, STEPTOE & JOHNSON LLP, <http://www.steptoel.com/f-166.html> [<https://perma.cc/26JG-L5FN>].

⁷⁶ E-mail from [name of sender], [title of sender], [to author] (date of the message, [time sent]) (on file with author).

⁷⁷ E-mail from [name of sender], [title of sender], [to author], (date of message, [time sent]) (on file with author).

⁷⁸ *Discovery Counsel Services*, MCGUIRE WOODS, <https://www.mcguirewoods.com/Services/Practices/Commercial-Litigation/Discovery-Counsel-Services.aspx> [<https://perma.cc/P294-EKYE>].

⁷⁹ E-mail from [name of sender], [title of sender], [to author] (date of the message, [time sent]) (on file with author).

⁸⁰ Catherine Ho, *A law firm cashes in on the management of data*, WASH. POST (Jul. 20, 2014), https://www.washingtonpost.com/business/capitalbusiness/a-law-firm-cashes-in-on-the-management-of-data/2014/07/18/fcbce420-0c68-11e4-b8e5-d0de80767fc2_story.html?utm_term=.5085e905cc00 [<https://perma.cc/WC7L-JWEX>].

| | | | |
|------|---------------------------|-----|------------------------------------|
| | | | Chicago, IL |
| 2010 | McDermot ⁸¹ | 125 | Menlo Park, CA (Palo Alto Area) |
| 2010 | Wilmer Hale ⁸² | 250 | Dayton, OH |

V. THE NEW PARADIGM

eDiscovery service providers, and the litigants that rely on their services, face an opportunity for bold innovation with this uptick in legal employment. The abundance of U.S. attorneys willing to seek hourly employment on discovery teams is drying up and with the amount of work this segment of the legal market is responsible for, just opening smaller offices in larger metropolitan areas does not solve the problem completely. LPOs were viewed as providing employment when opportunities were scarce, and attorneys seeking such employment were viewed as fungible. Both dynamics are changing with the new labor equilibrium. LPOs that embrace a new paradigm will better serve themselves, their employees and their corporate and law firm clients.

A. Wage Pressure Exists: But Not to a Large Degree

Normally, when there is a labor shortage, it puts upward wage pressure on the market. While wages in the eDiscovery market continue to rise for non-entry level positions, they are barely rising for the attorneys working on document review projects. This is usually the entry path to most salaried positions within an LPO. In lower-cost geographies, wages were \$20 per hour over a decade ago and now have crept up to \$22 per hour. One reason for the slower wage growth, is that discovery attorneys are not susceptible to being poached away from their current employers if offered an extra dollar or two per hour. The primary reason is that there are only so many LPOs with operations in each metropolitan area, less a major city like New York, and leaving one mid-project (*i.e.* project hopping) can result in the individual foreclosing opportunities to work with their initial employer in the future. As a result, wage comparisons only help an LPO if it is trying to staff a new project in the same city as a competitor at the same time. Due

⁸¹ *McDermott Expands its Big-Ticket Discovery Center Solution*, MCDERMOTT WILL & EMERY (Apr. 3, 2013), https://www.mwe.com/en/press-room/2013/04/mcdermott-expands-its-big-ticket-discovery-cente__ [

⁸² *Dayton – Business Services Center*, WILMERHALE, <https://www.wilmerhale.com/pages/OfficeDetails.aspx?officeId=11555> [<https://perma.cc/3NVZ-7UG5>].

to this unlikelihood of circumstances, LPOs do not use entry level wage growth as a tactic to increase the pool of prospective employees.⁸³

B. Affiliations and Collaborations with Law Schools

As noted previously, LPOs have historically heavily relied on hourly positions, at least at the entry point of the employer/employee relationship, with the bulk of the burden falling on document review. As a result, there is natural attrition that occurs as hourly employees find alternative salaried work. This makes LPOs dependent on the local legal labor market having enough “slack” that at any given time there are enough attorneys willing to take hourly, project-based work. However, with such labor pools shrinking across the country, it is highly valuable for LPOs to identify alternate methods of recruiting labor and provide a means for retaining that labor. Several LPOs have attempted to tap into the consistent stream of recent law school graduates by partnering with law schools.

In 2012, Cicayda partnered with the Cumberland School of Law to create an eDiscovery Institute and Review Center within the walls of the law school. Here, graduates get exposure to real-world eDiscovery cases and training on technology in the space. Additionally, with this effort, Cicayda has collaborated with the law school on new courses and certificate programs.⁸⁴ In 2015, UnitedLex launched its Legal Residency Program in concert with four law schools around the country: Emory School of Law, Miami School of Law, Ohio State’s Moritz College of Law and Vanderbilt School of Law. The residency program was modeled off of the same idea as a medical residency. Here, residents go through a two-year training and professional development program, after which some will remain among UnitedLex’s management team, whereas others will join employers seeking these uniquely trained attorneys.⁸⁵ After this initial group of four, UnitedLex entered partnerships with three other law schools—Boston University, Notre Dame Law School, and the USC Gould School of Law. In 2016, Integreon teamed up with the Suffolk Law School in Boston, Massachusetts to bring discovery operations on campus. Integreon and Suffolk created a 30-person delivery center onsite at the school. This model capitalizes on the talent of

practices/e-discovery [<https://perma.cc/W9HC-4Y8S>].

⁸³ *Orrick’s Global Operations Center Celebrates 10th Anniversary*, ORRICK (Jul. 10, 2012), <https://www.orrick.com/News/2012/07/Orricks-Global-Operations-Center-Celebrates-10th-Anniversary> [<https://perma.cc/c/92YM-5BBV>].

⁸⁴ *Complex Litigation & Discovery Center-Document Review Services*, STEPTOE & JOHNSON LLP, <http://www.steptoel.com/f-166.html> [<https://perma.cc/26JG-L5FN>].

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⁸⁵ E-mail from [name of sender], [title of sender], [to author], (date of mes

existing law students—even a few undergraduates—and infrastructure of the law school to provide both discovery delivery opportunities and trainings.⁸⁶

In addition to fostering potential employment relationships following graduation, the LPO-law school partnerships have sought to increase the presence of eDiscovery and its practice and issues in law school curriculums. Until recent years, this presence was minimal,⁸⁷ especially when compared with the role eDiscovery can play in most commercial litigation, both in terms of cost and strategy. Recently, schools like Florida worked in tandem with Catalyst Repository Systems, an eDiscovery technology company, to build an eDiscovery course for their students,⁸⁸ and other schools have elected to integrate via hiring current professionals to their schools as Adjunct Professors on the topics. A rise in practical opportunities through these partnerships is in line with the recent push toward a more “clinically-focused” law school education.⁸⁹ LPOs are banking on both the

sage, [time sent]) (on file with author).

⁸⁶ *Discovery Counsel Services*, MCGUIRE WOODS, <https://www.mcguirewoods.com/Services/Practices/Commercial-Litigation/Discovery-Counsel-Services.aspx> [https://perma.cc/P294-EKYE].

⁸⁶ E-mail from [name of sender], [title of sender], [to author] (date of the message, [time sent]) (on file with author).

⁸⁶ Catherine Ho, *A law firm cashes in on the management of data*, WASH. POST (Jul. 20, 2014), https://www.washingtonpost.com/business/capitalbusiness/a-law-firm-cashes-in-on-the-management-of-data/2014/07/18/fcbce420-0c68-11e4-b8e5-d0de80767fc2_story.html?utm_term=.5085e905cc00 [https://perma.cc/WC7L-JWEX].

⁸⁷ *McDermott Expands its Big-Ticket Discovery Center Solution*, MCDERMOTT WILL & EMERY (Apr. 3, 2013), https://www.mwe.com/en/press-room/2013/04/mcdermott-expands-its-big-ticket-discovery-cente__ [

⁸⁸ *Dayton – Business Services Center*, WILMERHALE, <https://www.wilmerhale.com/pages/OfficeDetails.aspx?officeId=11555> [https://perma.cc/3NVZ-7UG5].

believes that some law schools do not spend sufficient time on e-discovery, burying the topic in a few days of Civil Procedure. However, e-discovery knowledge is crucial. ‘In 2007 at University of Florida, we conceived it as a survival course,’ he said. Law students at University of Florida have the opportunity to partner with Catalyst Repository Systems (www.catalystsecure.com), a company that makes cloud-based e-discovery software, to complete real-life exercises in e-discovery.’).

⁸⁹ Kathy Morris, *Law Students Need Professional Development*, TOO, LAW PRACTICE TODAY (May 2014), https://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/may14/law-students-need-professional-development-too.html (“Do law schools properly prepare students for the reality of day-to-day legal practice? The consensus – from recent graduates to veteran practitioners – appears to be no. However, some law schools are trying new approaches to providing practical training to future lawyers, and are finding ideas and inspiration from current practitioners.”).

potential pipeline and increased industry visibility to attract future candidates amid the changing market dynamic.

C. Investing in People by Investing in Tools and Workflows to Increase Productivity

When marketing services, LPOs emphasize productivity and efficiency. However, when litigation forces exigencies upon their clients, LPOs could traditionally rely upon labor arbitrage (e.g., hiring as many lawyers as needed to meet court-imposed deadlines). However, litigants cannot rely on this safety valve as confidently when labor is scarce. This has opened a new market demand for project management efficiency, innovative technology utilization and people management. That makes it all the more valuable for LPOs to invest in improving worker efficiency and expertise.

Document review itself can only go so fast given the document-by-document nature of projects. Decisions, or “coding,” need to be applied to each document. However, companies and legal counsel are now starting to leverage technologies such as threading, deduplication, and propagation to accelerate productivity. These tools have often been considered culling tools, but that has left them under-utilized. LPOs successfully combating the labor shortage can use these same tools create propagation workflows in document review, which can often double the rate of review for a standard reviewer. Hence, even if an LPO has less employees in the aggregate than it did several years ago, the overall output of those employees may still be greater than before. Thus, an LPO’s business volume can grow without proportionally increasing its need for labor.

D. Investing in People by Investing in their Training and Development

When a labor shortage occurs, “talent” is generally harder to find in the open market. This can often lead to disappointment in the form of hires that the LPOs rather quickly realize are not going to work out. In an effort to guard against attrition, LPOs that will continue to deliver quality work-product are, or should be, doing the following:

- **Creating salaried positions within their entry-level discovery positions.** It’s natural for a recent law graduate to not feel fully secure in an employer-employee relationship that is based on hourly employment. Those, by their nature, imply a level of uncertainty, or lack of full commitment, no matter how well intended. As a result, hourly employees are likely constantly looking for new opportunities. Attrition among that part of an LPO’s labor force is likely significantly higher than its salaried portion. But

because this part of an LPO's labor force can be so significant, it is a part that can cause serious disruption to delivery and institutional knowledge if people start to continuously leave the LPO for alternative salaried positions.

- **Creating Actual Career Experiences for Newer Employees.** Companies that are investing in training and development are working to not only keep their employees engaged and happy, but also looking to leverage them in multiple scenarios. Training and development does not mean simply a free continuing legal education course, but rather a combination of live exercises, workshops and classes that make them better not only at their current job, but multiple jobs within the LPO environment. Such training may be developed for the salaried staff in an LPO, but it is equally imperative for hourly employees as well. Additionally, the scope of these trainings must follow the entire EDRM and touch on data privacy and information governance given the increasing complexity of modern litigation—the importance of which is noted directly below.
- **Shared Employee Pools.** Even though LPOs advertise many different practice groups or divisions, the lines are becoming increasingly blurred. Groups may include forensic divisions (that search for and analyze data), predictive coding divisions (that cull data using software), project management divisions, document review divisions and litigation consulting, among many others. Because discovery efforts vary, cutting-edge LPOs are training true legal technology generalists that can manage and execute from legal operations and information governance consulting to building “witness kits” for outside counsel and everything in between. This investment allows the corporation to competently deliver on new work as it arrives and fosters employees that are more skilled, engaged and committed to the company. As such, if a practice group has continued new work, the company can promote or transfer internally across divisions, and know the employee's skillset well, instead of basing a hiring decision off of a couple of interviews and a resume.

E. Creating and Emphasizing Non-Traditional Workflows

LPOs have been operating overseas since the early to mid-2000's,⁹⁰ and while "offshore" adoption has been impressive amongst the LPO industry, the lion's share of work still takes place in the US.⁹¹ For the purposes of this section, "work" will refer to document review projects and the locations from which they are executed. Most companies offer onshore or offshore review, or there are multiple offshore-only companies that do not have a U.S. component or U.S. companies that have no offshore option. Amid these options, an emerging delivery solution for LPOs is a dual-shore review. With dual-shore review, any combination of a review can be split between onshore and offshore review personnel. All cases are different, and clients, their counsel and the LPO may choose to perform certain segments of a review on-shore, and the other segments offshore.

Dual-shore document review, in theory, gives law firms, clients and LPOs a win-win solution. For clients, the solution offers potential cost savings through the lower hourly rates available—typically better than even US rates for pure attorney staffing.⁹² Utilizing offshore resources allows clients, law firms, and LPOs to continue to tap into a deep labor pool. Unlike the U.S., India, for example, is producing an increasing number of legal graduates per year. According to the Bar Council of India, there were between 60,000-70,000 law graduates joining the legal profession in 2013.⁹³

⁹⁰ Sasha Borsand and Amar Gupta, *Public and Private Legal Process Outsourcing: Moving Toward a Global Model of Legal Expertise Deliverance*, 2009 PACE INT'L L. REV. ONLINE COMPANION, 1, 5 (2009) ("Although India is the biggest and most common country to receive legal outsourced work, other countries like the Philippines, Australia, China and South Korea are also in the market of offshore LPO.").

⁹¹ Alexandra Hanson, *Legal Process Outsourcing to India: So Hot Right Now*, 62 SMU L. REV. 1889 (2009) ("As the phenomenon of delegating legal projects to LPO vendors grows, it raises significant legal and ethical issues for both American lawyers who outsource and their clients whose confidential information may be jeopardized or compromised. Fundamentally, 'despite projections that outsourcing legal work to India will be a \$4 billion industry by 2015, the work is still controversial.'").

⁹² *Id.* at 1893 ("The primary 'reasons for outsourcing abroad are cutting costs and increasing efficiency.' From the cost-cutting side, 'LPO salaries for Indian lawyers are generally well below \$10,000 a year . . . while associate base salaries at major firms in New York start at \$160,000 a year . . . '").

⁹³ *Vision Statement 2011-2013*, THE BAR COUNCIL OF INDIA, <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13> ("Every year, approximately 60,000 – 70,000 law graduates join the legal profession in India. The practice of law has however changed drastically in the past few decades – and the major reason for the same has been the liberalisation and growth of the Indian economy. Therefore, we now see a rapidly

These large figures represent a deep pool of cost-effective and qualified document review talent.⁹⁴ And with a dual-shore model, these cost savings can be accompanied with client and law firm comfort that otherwise would not exist if the review was performed purely offshore. Depending upon the specifics of the discovery effort or the facts of the case, the client and/or law firm may prefer that core management or complex tasks be completed in the U.S. They also may want to keep sensitive or regulated data onshore. Whatever the reasons, the dual-shore model has the potential to offer considerable cost saving.

For the LPO, this model can be a win as well. Offshore locations generally provide safer margins than domestic work due to the downward pressure on eDiscovery and litigation support prices that continues within the legal industry. Additionally, due to the contracting labor market, scaling domestically can be difficult in certain circumstances. Ultimately, if an LPO needs to scale beyond its designed capacity and current strategic planning, this can lead to increased costs in quality control and management time, and also increases the risks for potential errors in review. Thus, utilizing an offshore labor market that is ripe in numbers and talent is a wise decision for LPOs and their clients.

V. CONCLUSION

Overall, the legal labor market for LPOs is shrinking in quick order, and a more intense fight for resources has begun. But this doesn't have to have dire consequences for LPOs. Those that embrace the changing paradigm and use it as an opportunity to invest in their employees and create innovative workflows can improve service offerings across the board and thrive for years to come.

growing (and international quality) corporate legal sector in India as well as the beginning of an outsourced legal process services sector.”).

⁹⁴ *LPO Fastest Growing Segment in India*, INTEGREON.

<http://www.integreon.com/BlogDetails?BGID=39> Robert.

